

II. Obviousness-Type Double Patenting Rejection

Claims 1-45, 47-67, 69-113 and 118-167 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1-188 of co-pending Application No. 09/685,577 in view of U.S. Patent No. 4,952,245 to Iwano et al. ("*Iwano*").

Although Applicants disagree with this rejection, Applicants note that a Terminal Disclaimer over co-pending Application No. 09/685,577 was filed in the instant application on October 15, 2002. With this Terminal Disclaimer, Applicants disclaimed "the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §§ 154 to 156 and 173, as presently shortened by any terminal disclaimer, of any patent granted on Application No. 09/685,577..." (emphasis added). The term "any patent granted" includes any claims that were amended or added prior to issuance. See e.g., M.P.E.P. § 1490. Accordingly, the previously filed Terminal Disclaimer is effective to obviate the present rejection, and therefore renders the present rejection moot.

Applicants therefore respectfully request the withdrawal of the rejection and the timely allowance of pending claims.

III. Conclusion

Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

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Please grant any extension of time under 37 C.F.R. § 1.136 required to enter this paper and charge those additional fees to our Deposit Account No. 06-916.

Respectfully submitted,

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Dated: September 10, 2003

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